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| <b>GHAFOUR ASEMANI,</b>                             | ) |                                       |
|   | ) |                                       |
| <b>Plaintiff,</b>                                   | ) |                                       |
|   | ) |                                       |
| <b>v.</b>   | ) | <b>Civil Action No. 01-2231 (JDB)</b> |
|   | ) | <b>ECF</b>                            |
| <b>THE ISLAMIC REPUBLIC OF IRAN, <i>et al.</i>,</b> | ) |                                       |
|   | ) |                                       |
| <b>Defendants.</b>                                  | ) |                                       |
|   | ) |                                       |

Plaintiff has filed a complaint against the Islamic Republic of Iran, the Ayatollah Khamenei, and several agencies of the Government of Iran, alleging that he was tortured and falsely detained by defendants on July 14, 2000, because of his adherence to the Baha'i faith. His claim is based on the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. §§ 1602 *et seq.*, which authorizes certain actions against a foreign state in the courts of the United States, including an action "in which money damages are sought against a foreign state for personal injury . . . that was caused by an act of torture . . . if such act . . . is engaged in by an official, employee, or agent of such foreign state while acting within the scope of" employment. 28 U.S.C. § 1605(a)(7).<sup>1</sup>

<sup>1</sup> Section 1605(a)(7) also requires that the foreign state has been designated as a state sponsor of terrorism. Iran has received such a designation. *See, e.g., Jenco v. Islamic Republic of Iran*, 154 F. Supp. 2d 27 (D.D.C. 2001); *Elahi v. Islamic Republic of Iran*, 124 F. Supp. 2d 97 (D.D.C. 2000); *Cicippio v. Islamic Republic of Iran*, 18 F. Supp. 2d 62, 68 (D.D.C. 1998).

his post-judgment motion, plaintiff submitted a copy of an arbitration offer that he had sent by certified mail to the Interests Section of the Islamic Republic of Iran. The Court of Appeals held the appeal in abeyance pending action by this Court on his motion for relief from judgment. Because plaintiff had provided evidence that he had offered the foreign state a reasonable opportunity to arbitrate his claim,<sup>2</sup> this Court granted his motion for relief from judgment. Thereafter, the Court of Appeals remanded the case to this Court

for further proceedings on [plaintiff's] complaint, including his contentions that he was a "national of the United States" at the time he suffered the injuries of which he complains, see 28 U.S.C. § 1605(a)(7)(B)(ii), and that he was a victim of "torture" for purposes of the Foreign Sovereign Immunities Act ("FSIA"), see id. § 1605(a)(7).

Court of Appeals Order dated October 2, 2002 (Dkt. # 12). Because plaintiff had filed in the Court of Appeals a petition for a judicial declaration of nationality under 8 U.S.C. § 1503(a), the Court of Appeals further ordered

that [plaintiff's] petition for a judicial declaration of nationality under 8 U.S.C. § 1503(a) and 28 U.S.C. § 2201 be referred to the district court for consideration. If, as a condition of his FSIA "torture" action, [plaintiff] prevails on his claim that he was a "national of the United States" under 28 U.S.C. § 1605(a)(7)(B)(ii), it is unclear whether it will be necessary for the district court to decide questions that might arguably be posed under 8 U.S.C. § 1503(a) and 28 U.S.C. § 2201. In any event, it is clear that the petition for a judicial declaration of nationality is not now properly before this court, because the district court has yet to consider whether it has jurisdiction to entertain such claim under 8 U.S.C. § 1503(a) and 28 U.S.C. § 2201, and, if so, whether such a claim is meritorious.

*Id.* This matter has now been assigned to the undersigned judge of this Court.

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<sup>2</sup> Exhibits 4 - 7 to the motion for relief from judgment show that plaintiff's arbitration offer was received by the Interests Section on October 1, 2001.

Suit under the “torture” provision of the FSIA is available only when the victim was a “national of the United States (as that term is defined in section 101(a)(22) of the Immigration and Nationality Act) when the act upon which the claim is based occurred.” 28 U.S.C. § 1605(a)(7)(B)(ii). Section 101(a)(22) of the Immigration and Nationality Act, now codified at 8 U.S.C. § 1101(a)(22), provides that “[t]he term ‘national of the United States’ means (A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.” Plaintiff, who was born in Iran of Iranian parents, is not a citizen of the United States. He asserts, however, that he is a “national” of the United States who “owes permanent allegiance to the United States,” and that this status existed in July 2000, when he incurred the alleged injuries.

Plaintiff’s pleadings and supporting documents show that he came to the United States on a student visa in 1984. He graduated from high school, college, and dental school in the United States, and registered for the Selective Service in 1991. In 1991 he married Salmira Salmassi, an Iranian-born woman who became a United States citizen in 1996; they have four children. Plaintiff became a permanent resident in 1994. Attached to his petition for declaration of nationality (Dkt. # 13) are the following documents:

- Application to File Declaration of Intention to become a citizen, dated April 26, 1996 (Exhibit 4)
- Application for Naturalization dated August 20, 1997 (Exhibit 7)<sup>3</sup>

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<sup>3</sup> This application was denied because, although plaintiff was married to a United States citizen and was a permanent resident, his wife had only become a citizen nine months earlier, on November 23, 1996, whereas the statute under which he applied for citizenship required that the spouse have been a citizen for three years. In addition, plaintiff had not been admitted for permanent residence for the required five years. He was, therefore, ineligible to apply for citizenship at that time. (Exhibit 12.)

- Documents from 1999 indicating that his application for citizenship had been reopened (Exhibits 16, 17).
- Updated application dated August 28, 1999 (Exhibit 19).

With his Supplemental Brief in support of his petition for a judicial declaration of nationality (Dkt. # 20), plaintiff provided the following additional documents:

- Certificate Preparation Sheet and Oath Declaration, signed September 21, 1998, in which plaintiff renounces all allegiance and fidelity to any state of which he has previously been a subject, and vows to “support and defend the Constitution and the laws of the United States of America against all enemies, foreign and domestic” and that he “will bear true faith and allegiance to the same.” (Exhibit IV).
- Notice to appear for an N-400 Citizenship Examination on July 14, 1999 and a copy of his 1997 application for citizenship with notes apparently made by the Immigration and Naturalization Service examiner at the July 1999 interview (Exhibits VII, VIII).

The designation “national” originally was limited to residents of territories of the United States, such as persons born in the Philippines before that country obtained independence. *See, e.g., Scholz v. Shaughnessy*, 180 F.2d 450 (2d Cir. 1950); *Yuen v. Internal Revenue Service*, 497 F. Supp. 1023 (S.D.N.Y. 1980); *Cabebe v. Acheson*, 84 F. Supp. 639 (D. Hawaii 1949). Lengthy residence in the United States and marriage to a citizen would not render a person a “national” under these earlier decisions. Recent cases, however, suggest that a person may become a “national” of the United States by applying for citizenship. *See, e.g., Hughes v. Ashcroft*, 255 F.3d 752 (9<sup>th</sup> Cir. 2001); *United States v. Morin*, 80 F.3d 124, 126 (4<sup>th</sup> Cir. 1996); *Oliver v. United States Dep’t of Justice*, 517 F.2d 426 (2d Cir. 1975); *Carreon-Hernandez v. Levi*, 409 F. Supp. 1208 (D. Minn. 1976), *aff’d*, 543 F.2d 637 (8<sup>th</sup> Cir. 1976), *cert. denied sub nom. Hernandez v. Levi*, 430 U.S. 957 (1977). In *Oliver*, the Court of Appeals for the Second Circuit concluded that the plaintiff was not a “national of the United States” because she had not begun the process of naturalization and thus was assumed still to owe allegiance to Canada. *See* 517 F.2d at 427-28. Similar results were reached in *Carreon-Hernandez v. Levi* and *Hughes v. Ashcroft*. As the Court of Appeals for the Fourth Circuit said in *Morin*, an application for citizenship is “the most compelling evidence of

permanent allegiance to the United States short of citizenship itself.” *See* 80 F.3d at 126; *see also Shekoyan v. Sibley Int’l Corp.*, Civil Action No. 00-2519, Memorandum Opinion filed August 19, 2002 (D.D.C.).

The documents submitted by plaintiff establish that in 1996 he filed a notice that he intended to apply for United States citizenship, that he filed the application for citizenship in 1997, that his application was denied at that time as premature, and that in 1998 he filed an oath of allegiance to the United States. He pursued his application for citizenship through an interview with an Immigration and Naturalization officer in July 1999. Under the current interpretation of the term “national,” plaintiff has demonstrated his permanent allegiance to the United States sufficient to constitute him a “national” within the meaning of the FSIA. *See* 28 U.S.C. § 1605(a)(7)(B)(ii). That is all that this Court must decide at this time for purposes of the current case.

Accordingly, it is by the Court this 23rd day of April, 2003, hereby

**ORDERED** that plaintiff has demonstrated that he was a “national” of the United States within the meaning of 28 U.S.C. § 1605(a)(7)(B)(ii) in July 2000 and therefore is authorized to pursue this claim under the Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1602 *et seq.* It is

**FURTHER ORDERED** that plaintiff’s motion for a judicial declaration of nationality [Dkt. # 13] is **DENIED without prejudice**. It is

**FURTHER ORDERED** that plaintiff’s motion to expedite rulings [Dkt. # 19] is **DENIED** as moot. It is

**FURTHER ORDERED** that summonses shall issue for the defendants pursuant to Rule 4(j) of the Federal Rules of Civil Procedure and 28 U.S.C. § 1608.

/s/ John D. Bates  
JOHN D. BATES  
United States District Judge

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Plaintiff *pro se*